

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9689 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

FATESINH KHUSHALBABA ATALIYA

Appearance:

MR HARDIK C RAWAL for Petitioner
MR MTM HAKIM for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/04/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by
Mr.Hakim, learned advocate appearing for the respondent.
On the facts and in the circumstances of the case, the
matter is taken up for final hearing today itself.

2. The facts of the present petition, in short, are that though the respondent was not on duty on 29.5.1985, he drove the ST Bus No. GRJ 7317 in an intoxicated stage by consuming liquor and took the bus unauthorizedly. On the way, he dashed the bus with a truck and thereafter, with a jeep in which officers of the ST Corporation were travelling. Police complaint was filed against the respondent. Departmental inquiry was initiated against him in which the charges levelled against him were proved. He was reduced to the minimum pay scale of driver against which he preferred first departmental appeal. In the departmental appeal, the authority concerned took the order in review and show cause notice was issued to the respondent as to why the punishment of dismissal should not be imposed on him. Thereafter, the punishment of dismissal was imposed against which the respondent approached the labour court by filing reference No. 748 of 1992. The labour Court, Vadodara, by impugned judgment and award dated 9.2.1999 partly allowed the said reference and directed the petitioner corporation to reinstate the respondent workman in service with 25% of the back wages for the intervening period. Feeling aggrieved and dissatisfied by the said judgment and award of the labour court, the petitioner has approached this Court by way of this petition under Article 226/227 of the Constitution of India.

I have heard the learned advocates for the parties. Learned advocate Mr. Raval appearing for the petitioner corporation has submitted that before the reviewing authority, the respondent who had been working for more than ten years had admitted that at the time when the said accident had taken place, he was unauthorizedly driving the bus from Dabhoi to Karjan and at that time, he was in intoxicated stage but it was the explanation of the respondent workman that he had taken it as a medicine. Therefore, it was submitted by Mr. Raval that in view of such admission made by the workman before the first appellate authority/reviewing authority, the labour court ought not to have passed award of reinstatement. He has further submitted that the grant of 25% of the back wages for the intervening period would amount to premium and, therefore, the impugned award is bad, illegal, unjust and is liable to be quashed and set aside.

I have perused the impugned award passed by the labour court. I have also perused the papers brought on record. I have also considered the submissions made by

the learned advocates for the respective parties. Before the labour court, the respondent workman had filed purshis whereby he had admitted the legality, validity and propriety of the departmental inquiry initiated against him but he was aggrieved with the findings drawn by the inquiry officer and he was further aggrieved with the impugned order of dismissal as being harsh and unjustified.

Mr. Hakim, learned advocate appearing for the respondent workman has submitted that the respondent's evidence was not cross examined by the petitioner before the labour court. He has further submitted that no evidence was led by the petitioner before the labour court for controverting the averments made by the respondent workman. He has further submitted that in criminal proceedings, the respondent was acquitted by the criminal court. He has submitted that in view of his acquittal from the criminal charge, the petitioner corporation was not justified in imposing harsh and excessive penalty of dismissal from service. He has submitted that initially the competent authority has imposed punishment of putting him in the minimum scale of the category of driver which order was challenged by way of appeal and during the pendency of the appeal proceedings, the matter was reviewed by the appellate authority. He has further submitted that in the facts and circumstances of the case, the appellate authority was not justified in reviewing the matter and, therefore, the labour court was right in exercising the powers under section 11A of the ID Act and was also right in reinstating the respondent in service with 25% of the back wages for the intervening period.

In similar situation, in case of Jashvant Sinh versus Pepsu Roadways Transport Corporation, reported in AIR 1984 SC 355, the apex court has observed that no doubt the driver of a passenger bus cannot and should not consume intoxicated liquor while on duty because that endangers safety not only of the passengers travelling in the said vehicle but those who were using the roads but where it was the first offence of the driver and the labour court, in exercise of the powers under sec. 11A of the ID Act, was of the opinion that in the facts of the case, punishment of dismissal was rather heavy and not called for and, therefore, reduced the punishment. It was further observed that the labour court was right and justified in directing reinstatement of the workman. It was further observed that mere denial of back wages to the driver is not sufficient and it was observed that further punishment is also called for and should be imposed. The apex court therefore directed that the

driver should not be given three increments in the time scale in which he would be reinstated for the next three years.

In view of the above decision and also in view of the facts and circumstances of the case, I am of the view that the impugned award is required to be set aside in so far as it relates to grant of 25 % of the back wages for the intervening period. I am also of the view that in addition thereto, further punishment of stoppage of three annual increments is required to be imposed upon the workman with permanent/recurring effect. The impugned award, thus, is required to be modified to the extent indicated hereinabove.

Accordingly, this petition is partly allowed. The impugned award is quashed and set aside in so far as it relates to grant of 25% of the back wages for the intervening period. Further, the petitioner is directed to stop three annual increments of the respondent workman with permanent effect. Rest of the award qua reinstatement of the respondent workman shall remain in tact.

Accordingly, the award impugned herein is modified as under:

The petitioner is directed to reinstate the respondent workman in service with continuity of service and without any back wages for the intervening period with a further punishment of stoppage of three annual increments with future effect.

Since this Court has allowed this petition in part and since this court has confirmed the reinstatement of the respondent workman as aforesaid, in the interest of justice, the petitioner corporation is directed to implement the impugned award as modified by this Court as expeditiously as possible, preferably within four weeks from the date of receipt of certified copy of this order by reinstating the respondent in service. The petitioner corporation is further directed to pay full wages from the date of the impugned award dated 9th February, 1999 till the date of actual reinstatement of the respondent workman within eight weeks from the date of receipt of certified copy of this order.

This petition is thus, partly allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

19.4.2000. (H.K.Rathod, J.)

Vyas